REMARKS

Applicant respectfully requests entry of the foregoing amendments and reconsideration of the application in view of the amendment above and the remarks below. Claims 1-26 are currently pending in the application, of which claims 1, 10, 16, 25, and 26 are independent. No new matter has been introduced by way of the foregoing amendment.

Amendments Due to Prior "Technological Arts" Rejection

Applicant notes that the form of many of the pending claims is based on a "technological arts" rejection made in the December 18, 2003, office action. Thus, independent method claims 1 and 10 were amended in the April 19, 2004, response to their present form of "processor-readable medium comprising code to cause a processor to . . ." Independent claims 25 and 26, and dependent claims 21 and 22 (depending from claims 1 and 10, respectively) were added in connection with the RCE filing of December 8, 2004, in the same format. Applicant notes that in response to the BPAI's decision in *Ex parte Lundgren*, the PTO adopted its Interim Guidelines, signed on October 26, 2005, which expressly eliminate the "technological arts" rejection as a proper ground of rejection. Since the current response is the first response filed in the present application since the Interim Guidelines were adopted, Applicant takes this opportunity to amend independent claims 1 and 10, and dependent claims 2-9 and 11-15, back to their prior method format, and to amend dependent claims 21 and 22 to correspond to their amended independent claims 1 and 10. Applicant submits that this amendment does not necessitate a new search, since the substantive elements of the claims have not changed.

Other Claim Amendments

Applicant amends dependent claims 23 and 24 to correct an error introduced when the claims were originally presented. The claims as amended properly refer to the "system" of claim 16, rather than the "processor readable medium" of claim 16.

Rejection of Claims 1-10, 12-26 under 35 U.S.C. § 103(a) over Rebane '581

Claims 1-10, 12-26 were rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 6,711,581 to Rebane ("*Rebane '581*"). As a preliminary matter, Applicant notes that *Rebane '581* is not prior art to the present application – the application issuing as *Rebane '581* was filed on August 21, 2002, which is after the October 31, 2000, filing date of the present application. Thus, *Rebane '581* is not a proper basis for the rejection. However, Applicant notes that *Rebane '581* is a continuation of U.S. Pat. No. 6,539,392 to Rebane ("*Rebane '392*"), the application for which was filed on March 29, 2000. In the interest of expediting prosecution, Applicant will respond to the rejection as though based on *Rebane '392.*

Applicant respectfully traverses the rejection of claims 1-20 and 12-26 over *Rebane '392.*

Independent Claims 1, 25, and 26 Are Patentable over *Rebane '392*

Applicant respectfully submits that the rejection of independent claims 1, 25, and 26 is not supported by the *Rebane '392* because the reference omits the element, common to all of these claims, of "determine [or determining] whether to invite the consumer to complete a survey" based on a comparison of consumer information and/or a comparison of merchant information.

The portion of *Rebane '392*'s disclosure on which the Examiner relies does not teach the artisan how to "determine whether to invite the consumer to complete a survey" based on a comparison of consumer information and/or a comparison of merchant information. Rather, the cited passage (Col. 12, lines 37-40 of *Rebane '581*, corresponding to Col. 12, lines 36-39 of *Rebane '392*) simply states that "For example, a consumer making an online purchase of goods from a merchant's website may be invited to fill out a consumer satisfaction survey questionnaire 100 or 200 following the transaction." This passage does not address any "determining" of whether or not to complete a survey. Rather, it simply identifies one type of data that may enter data capture 14. Indeed, if anything might be inferred from this statement, it would be that an invitation to fill out a survey questionnaire would follow every transaction. Thus, *Rebane '392* does not disclose "determine [or determining] whether to invite the consumer to complete a survey" as recited in claims 1, 25, and 26.

The Examiner acknowledges that *Rebane '392* does not explicitly disclose that the asserted determination is based at least partially on a comparison of consumer information and a comparison of merchant information. However, the Examiner asserts that this would be obvious since *Rebane '392* shows an example where if response rates fall below a certain threshold, an indication is sent to the merchant or other party to investigate the correctable reason, where a reason can be that the survey questionnaire is not being presented to purchasing consumers due to technical reasons. The Examiner then asserts that since these reasons are correctable, this indicates that in order to keep the response rates inside of the thresholds, the merchant or other party must make sure that the survey questionnaire is presented. Finally, the Examiner asserts that it would be obvious to base the determination on the comparison of consumer information and the comparison of merchant information because of the motivation of inviting a consumer to participate in a survey based on how the customer and/or merchant information relates to certain thresholds. This tortured logic does not provide the requisite motivation to modify the (non-existent) teaching of *Rebane '392*, and is also ill founded.

The disclosure cited by the Examiner (Col. 24, lines 34-60 of *Rebane '581*, corresponding to Col. 25, lines 12-38 of *Rebane '392*) is simply concerned with generating an alert signal to a merchant when a minimum expected number of survey responses is not received within a specified time interval so that the merchant may investigate the underlying causes of the lower-than-expected number of survey responses received. There is absolutely no suggestion that the merchant would present more survey questionnaires in order to achieve a desired response rate. In fact, that is contrary to the point of the alarm filter. The merchant is not interested in getting a particular number of survey responses, but rather is interested in knowing when the rate of responses drops below an expected value, as an indicator of a technical problem or other causal factor.

Thus, not only does *Rebane '392* fail to disclose any determination of whether or not to invite a consumer to complete a survey related to a transaction, and fail to disclose making any such determination based on the claimed comparison, it also does not provide the asserted motivation to the artisan to depart from what limited teaching it does provide.

Applicant thus submits that independent claims 1, 25, and 26 are allowable over *Rebane '392*. Rejected dependent claims 2-9 and 21 are allowable at least because of their dependency from claim 1.

Independent Claim 10 Is Patentable over *Rebane '392*

Applicant respectfully submits that the rejection is not supported by *Rebane '392*, because the reference omits the elements of "developing historical consumer information" and of "determining, using the historical consumer information, whether to collect survey information from the consumer in the transaction."

As discussed above in connection with claims 1, 25, and 26, *Rebane '392* does not disclose any determination of whether or not to collect survey information from the consumer in the transaction. For at least this reason, claim 10 is allowable over *Rebane '392.*

Further, *Rebane '392* does not disclose developing historical consumer information or making any determination of whether to collect survey information using the developed historical consumer information. For the "develop historical consumer information for each of the participating consumers" recited in claim 10, the Examiner cites to Col. 5, lines 25-30 of *Rebane '581* (corresponding to Col. 5, lines 21-26 of *Rebane* '392):

> In the system, the SLF processing module may use available recent historical data along with an estimated and/or available saturation population function as the basis for a differential equation that defines the growth of a population to a maximum attainable level.

Whatever might be gleaned from this passage, there is certainly no disclosure of developing historical information for each of the participating consumers. Absent the recited historical information, there can be no disclosure of making any determination about whether to collect survey information using the historical consumer information. For at least this additional reason, Applicant submits that claim 10 is allowable over *Rebane '392.* Further, Applicant submits that rejected dependent claims 12-15 and 22 are allowable at least because of their dependency from claim 10.

Independent Claim 16 Is Patentable over *Rebane '392*

Applicant respectfully submits that the rejection of claim 16 is not supported by *Rebane '392*, because the reference omits the elements of "a transaction record with information relating to a consumer to the transaction" and "determine whether to solicit survey information from the consumer to the transaction based at least partially on the transaction record and the stored consumer information."

As discussed above in connection with claims 1, 25, and 26, *Rebane '392* does not disclose any determination of whether or not to collect survey information from the consumer in the transaction. For at least this reason, claim 16 is allowable over *Rebane '392.*

Further, the Examiner does not point to any disclosure in *Rebane '581* of "a transaction record with information relating to a consumer to the transaction." The passage cited for "a monitoring interface" is the passage discussed above relating to an alarm filter. The disclosed alarm filter has nothing to do with a transaction record with information relating to a consumer to the transaction. The passages cited by the Examiner for the "processor configured to analyze said transaction record relative to stored consumer information" are similarly devoid of any disclosure of a transaction record relating to a consumer to the transaction. Thus, Applicant submits that claim 16 is allowable over *Rebane '392.* Further, Applicant submits that rejected dependent claims 17-20, 23, and 24 are also allowable at least for their dependency from claim 16.

Rejection of Claim 11 under 35 U.S.C. § 103(a) over Rebane '581 and Kurland

Claim 11 was rejected under 35 U.S.C. 103(a) as being obvious over *Rebane '581* in view of U.S. Pat. No. 4,603,232 to Kurland ("*Kurland*"). Applicant again notes that *Rebane '581* is not proper prior art. However, Applicant submits that claim 11 is allowable over the applied references (and *Rebane '392*) for at least the reason of its dependency from claim 10.

Conclusion

All of the stated grounds of rejection have been rendered moot. The Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that such rejections be withdrawn. The Applicant believes that a full and complete response has been

made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that further personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

The Director is hereby authorized to charge any appropriate fees under 37 C.F.R. §§ 1.16, 1.17, and 1.21 that may be required by this paper, and to credit any overpayment, to Deposit Account No. 50-1283.

Dated: 6/25/04

Respectfully submitted,
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